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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/507,236	02/18/2000	John G. Ellis	081862.P163	9691

7590

06/25/2004

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EXAMINER

MEHRA, INDER P

ART UNIT

PAPER NUMBER

2666

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/507,236

Applicant(s)

ELLIS, JOHN G.

Examiner

Inder P Mehra

Art Unit

2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Amendment***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

2. This is in response to an amendment B dated which has been fully considered and made of record. Based on this amendment, claims 1, 3, 5-14 are now pending. Claims 2 and 4 have been cancelled. In view of the following new ground of rejection, this office action is Non-Final.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 3, 5-14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 3, 5 and 11 recite limitation, "the common CID" in line 6. This limitation is not disclosed by specifications.

Appropriate correction /clarification is required.

Art Unit: 2666

***Claim Objections***

5. Claims 9-10 and 13-14 are objected to because of the following informalities:

Claim 9 recites the following limitation, “multiplexing the time multiplexed communication channels to multiple AAL2 VPs “.

Claim 13 recites the following limitation, “multiplex at least one time division multiplexed communication channels to multiple AAL2 VPs/VCs”.

Limitations of claims 9 and 13 are indefinite and confusing. Multiplexing is defined to transmit two or more signals over single channel, whereas in these limitations, it is not claimed that way.

Further, claim 13 recites, “multiplex at least one time division multiplexed communication channels to multiple AAL2 VPs/VCs”. In this limitation, “at least one time division multiplexed communication channels” is grammatically incorrect. Change channels into channel

Appropriate correction/clarification is required.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2666

7. Claims 1, 3, and 5-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Brueckheimer et al** ('261), in view of **Gibbs et al** (US Patent No. 6,683,877), hereinafter, Gibbs.

For claims 1, 3, 5-6 and 11, Brueckheimer ('261) discloses, in reference to fig. 1, a method Comprising:

- dynamically (col. 2 line 53-60), establishing ATM adaptation layer 2 (AAL-2) channel identifiers (CIDs), col. 2 lines 40-60, on a call-by-call basis, col. 5 line 67 through col. 6 line 10, refer to abstract, col. 1 line 4-6, col. 1 line 44, col. 2 lines 40-60, col. 3 lines 25-26, using ATM standards-based call control, col. 1 lines 53-55, signaling protocol (col. 5 line 65-col. 6 line 9);
- multiplexing voice information from one channel of a customer premise equipment into a plurality of AAL 2 packets at network edge device, refer to col. 2 lines 36-60, having a common CID of the AAL 2 CIDs.

Brueckheimer ('261) does not disclose expressly the following limitation, which is disclosed by Gibbs, as follows:

\* "executing a call set-up process in the AAL2 signaling layer, refer to col. 5 lines 45-59, col. 5 lines 29-42, and col. 7 lines 14-15, comprising mapping the common CID to virtual path /virtual channel (VP/VC), refer to col. 6 lines 40-45, col. 7 lines 3-7, that forms part of a virtual user network interface (UNI) to an ATM network, refer to col. 7 lines 53-55, and col. 7 lines 42-46,."

\* wherein the standards based ATM call control protocol is selected from the list comprising UNI 3.1/4.0 and Q.2931", refer to col. 7 lines 42-46.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the capability of mapping CID with VPI/VCI forming part of user network interface UNI to an ATM network. The mapping of channel identifier (CID) to VPI/VCI can be implemented by combining the system as taught by Gibbs with Breuckheimer et al ('261) at the user network interface (UNI) to an ATM network. The suggestion/motivation to do so would have been to match the traffic types and quality of service requirements.

For claims 7-10, and 12-14, Breuckheimer et al ('261) discloses the following limitations of the subject matter:

- multiplexing the time division multiplexed communication channel to multiple AAL2 VPs/VCs, *as recited by claims 9 and 13*, refer to col. 2 lines 42-49.
- mapping the multiple AAL2 VPs/VCs to the CIDs prior to mapping the CIDs to the VP/VC, *as recited by claims 10 and 14*, refer to col. 2 lines 52-55 and col. 10 lines 19-21.
- Computer readable instructions are embodied in a computer readable medium, *as recited by claim 12*, refer to col. 13 lines 1-13.

Gibbs discloses the following limitation:

- wherein the mapping is performed at a network edge device (gateway, fig. 1) communicatively coupled to the customer premises equipment, *as recited by claims 7 and 8* (end point, fig. 1)", refer to col. 6 lines 40-45.

Art Unit: 2666

It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the capabilities of mapping and multiplexing to be performed at the edge device coupled to the CPE. The mapping and multiplexing of channel identifier (CID) to VPI/VCI can be implemented by combining the system as taught by Gibbs with Breuckheimer et al ('261) at the end point, as taught by Gibbs. The suggestion/motivation to do so would have been to match the traffic types and quality of service requirements.

***Response to Arguments***

8. Applicant's arguments filed 10/7/03 regarding claims 1-14 have been fully considered but they are not persuasive.

Applicant argues that Brueckheimer '261 does not describe any method associated with the actual implementation of his connection control.

In response, it is stated that Brueckheimer '261 discloses, "a method for typical ATM adaptation of communication traffic", refer to col. 3 line 25, col. 4 lines 1-3, col. 1 lines 5-6; Further, Brueckheimer '261 discloses, " channel associated signaling, refer to col. 5 line 65 through col. 6 line 9.

Applicant argues that Brueckheimer '261 does not disclose, "establishing AAL2CIDs on a call by call basis using ATM standards-based call control signaling protocol", as taught by claim1.

In response, it is stated that Brueckheimer '261 discloses, ""establishing AAL2CIDs , refer to col. 2 lines 36-60, on a call by call basis , refer to "carrying call connection" col. 6 line 6/8-10, using ATM standards-based , refer to col. 1 lines 53-55, col. 10 lines 19-22 and col. 12

Art Unit: 2666

lines 12-14, call control signaling protocol”, refer to col. 5 line 65-col. 6 line 10, as taught by claim1.

Applicant argues, “executing a call set –up process in the AAL2 signaling layer , comprising mapping the common CID to a virtual path/virtual channel (VP/VC) that forms part of a virtual user network interface (UNI) to an ATM network”.

In response, it is stated that Gibbs discloses, “executing a call set –up process in the AAL2 signaling layer , comprising mapping the common CID to a virtual path/virtual channel (VP/VC) that forms part of a virtual user network interface (UNI) to an ATM network”, refer to office action above..

Applicant argues that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention ----;

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Brueckheimer ‘261, Brueckheimer ‘508 and Burns disclose, all the limitations of all the claims, refer to office action above.

Applicant argues that no where is there any indication that the references provide any motivation for the recited combination. Instead it appears the teachings of the present application



Art Unit: 2666

have been used to gather and assemble various components of the prior art in the manner contemplated by the applicant. This is classic example of the use of hindsight reconstruction, and cannot properly be used as grounds for rejecting the claims.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### *Conclusion*

9. Any enquiry concerning this communication should be directed to Inder Mehra whose telephone number is (703) 305-1985. The examiner can be normally reached on Monday through Friday from 8:30AM to 5:00 PM.

If attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Seema Rao , can be reached on (703) 308-5463. Any enquiry of a general nature of relating to the status of this application or processing should be directed to the group receptionist whose telephone number is (703) 305-4700.

10. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, DC. 20231

Application/Control Number: 09/507,236

Page 9

Art Unit: 2666

Or faxed to (703) 872-9314.

Hand –delivered responses should be brought to Crystal Park II, 2121 Crystal drive,  
Arlington, VA, sixth floor (Receptionist).

*Inder Pal Mehra*  
Inder Mehra

June 19, 2004

A stylized handwritten signature, likely of Inder Mehra, consisting of a large 'I' followed by a cursive 'M' and a horizontal stroke.